

DEPARTMENT OF EDUCATION**34 CFR Part 99****Family Educational Rights and Privacy**

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On January 17, 1995 (60 FR 3464), the Secretary of Education published in the **Federal Register** final regulations implementing the Family Educational Rights and Privacy Act. This document corrects an error that was made in the effective date.

FOR FURTHER INFORMATION CONTACT:

Ellen Campbell, Family Policy Compliance Office, Office of Management, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202-4605. Telephone (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on January 17 stated that the effective date was 45 days from the date of publication in the **Federal Register** subject to certain conditions. This document corrects the effective date to read "These regulations take effect on February 16, 1995."

Dated: February 8, 1995.

Rodney McCowan,

Assistant Secretary, Office of Management.

[FR Doc. 95-3699 Filed 2-14-95; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[OR11-2-6854; FRL-5145-3]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking final action to approve a revision to the state implementation plan (SIP) submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted

by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM-10 SIP for La Grande, Oregon.

EFFECTIVE DATE: This action will be effective on March 17, 1995.

ADDRESSES: Copies of the State's request and information supporting today's action are available for public inspection during normal business hours at the following locations: EPA, 1200 Sixth Avenue, Seattle, WA 98101, and the State of Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, OR 97204-1390.

FOR FURTHER INFORMATION CONTACT:

Montel Livingston, Air and Radiation Branch (AT-082), EPA, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553-0180.

SUPPLEMENTARY INFORMATION:**I. Background**

The Union County, La Grande, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990¹ (see 56 FR 56694 (November 6, 1991) and 40 CFR § 81.338). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act.² EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

The State of Oregon was required to submit for the La Grande PM-10 nonattainment area, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a

minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. (see sections 172(c), 188, and 189 of the Act).

Additional provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Such States also were required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544).

To address the CAAA of 1990, Oregon submitted a PM-10 nonattainment area SIP for La Grande, Oregon, on November 15, 1991. EPA reviewed the November 15, 1991, SIP revision according to its interpretation of subpart 1 and 4 of Part D of Title I of the Act. EPA concluded from its review that the SIP met the applicable requirements of the Act and EPA, therefore, indicated that it was approving the plan to be effective on August 30, 1994, unless adverse or critical comments were received by August 1, 1994, (see 59 FR 33914, July 1, 1994).

On July 1, 1994, EPA also published an accompanying proposed rule (see 59 FR 33941) explaining that if adverse comments were received on the prospective final rule approval of the La Grande PM-10 SIP, then the final rule would be withdrawn and all comments would be responded to in relation to the proposal. The notice also indicated that anyone wishing to comment should do so by August 1, 1994.

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, et seq.

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

EPA received an adverse comment on August 1, 1994, on its approval of the SIP. The effective date of the rule was withdrawn on September 13, 1994, to allow time for EPA to review and respond to the comment. See 59 FR 46929. EPA has thoroughly considered the comment in determining the appropriate action on the La Grande PM-10 SIP. The response to the comment is presented in the "Response to Comments" section below.

EPA is approving the La Grande PM-10 SIP as described in the July 1, 1994, **Federal Register** Notice at 59 FR 33914 and its accompanying technical support document and proposed in the July 1, 1994, **Federal Register** Notice at 59 FR 33941.

II. Response To Comments

A. Source Apportionment

The commenter questioned the validity of using Chemical Mass Balance (CMB) for source apportionment of the various smoke sources in the area. Commenter was concerned that CMB may not accurately distinguish between residential wood combustion, industrial emissions, field burning, and other open burning and therefore could lead to a control strategy that is not going to work properly. The Commenter did not provide specific evidence that the attainment demonstration is actually flawed, but rather raised as a concern the possibility that the source apportionment was inaccurate.

EPA has broad discretion in determining what modeling is appropriate for moderate PM-10 nonattainment areas. The CAA only requires that an attainment demonstration include "Air Quality Modeling" and does not describe a particular analysis. CAA § 181(B)(i). In contrast, CAA § 182(c)(2)(A) specifies that attainment demonstrations for serious ozone nonattainment areas must be based on photochemical grid modeling or an alternate analytical model that EPA determines to be at least as effective. See also, *Central Arizona Water Conservation Dist. v. EPA*, 990 F.2d 1531, (9th cir.), cert. denied 1114 Sup. Ct. 94, (1993).

As indicated in the General Preamble, 57 FR at 13539, EPA has developed a supplemental attainment demonstration policy for initial PM-10 nonattainment areas such as La Grande, Oregon. An earlier April 2, 1991, memorandum titled, "PM-10 Moderate Area SIP Guidance: Final Staff Work Product" contained "Attachment 5" describing the same policy. The policy sets out specific criteria for attainment demonstrations based on proportional

rollback analysis and explains that such analysis may be appropriate in cases where "time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration" by November 15, 1991. The policy further explains that its application is reserved for those initial PM-10 nonattainment areas that have "completed the technical analysis * * * and made a good-faith effort to submit a final SIP by their November 15, 1991, due date." The CAA gave states containing initial moderate PM-10 areas only a limited time—1 year from designation—to develop comprehensive control strategies and attainment demonstrations. CAA 189(A)(2)(a).

As discussed in the July 1, 1994, **Federal Register** and the technical support document for that notice, the Oregon Department of Environmental Quality (ODEQ) conducted an attainment demonstration based upon receptor modeling (Chemical Mass Balance version 7.0) and proportional emission inventory roll-back analysis. The results of the emission inventory and CMB analysis were consistent between themselves in identifying woodsmoke and soil dust as the major sources of PM-10 on exceedance days (e.g. local woodsmoke = 61 percent and 60 percent and soil dust = 38 percent and 32 percent for CMB and rollback methods, respectively). Control strategies for the area were developed based on this analysis. The CMB modeling was conducted according to EPA guidance. It was used in lieu of dispersion modeling because at the time the attainment plan was being developed, valid historical meteorological data was not available. It would not have been possible for the state to use dispersion modeling and still submit the SIP by November 15, 1991.

Therefore, because ODEQ followed EPA guidance, used the approved EPA CMB model, and because the CMB results were verified by the emission inventory, EPA is satisfied that the source apportionment provided by ODEQ in the La Grande PM-10 SIP is adequate. EPA has also considered the fact that, since implementation of the control strategies in 1991, the area has not exceeded the PM-10 NAAQS. The last measured 24-hour PM-10 exceedance occurred on January 28, 1991, indicating that the selected measures, are likely to be sufficient to attain the NAAQS and protect public health.

B. Potential Impact From Point Source Located Outside Nonattainment

The commenter questioned why the emissions from a large industrial source located "within close proximity to the PM-10 nonattainment area" was not accounted for in the SIP. The comment did not contain any specific data showing the sources' impact on the nonattainment area and did not provide any technical support for the general concern.

The source in question is Boise Cascade's Island City facility. This major source is located approximately five kilometers northeast of the La Grande PM-10 monitor and three kilometers from the nonattainment area border. The Island City facility is about fifty-five feet lower in elevation and is down valley from the PM-10 monitor.

It is the State's contention that the results from both the CMB modeling and wintertime PM-10 saturation surveys,³ indicate that this point source is not a significant contributor to the nonattainment problem. The CMB modeling, based on the analysis of 43 PM-10 samples (seven of which exceeded the 24-hour NAAQS), showed La Grande industrial source category emissions to be insignificant. The emission inventory showed industrial emissions to be less than five percent on a worst case day basis. Wintertime PM-10 saturation surveys conducted in 1985, 1989, and 1990, do not indicate a significant impact from the source. For these reasons, EPA thinks the State's contention is reasonable and it is EPA's position that the implemented control measures will bring the area into attainment of the NAAQS by the December 31, 1994, attainment date. See 59 FR 33918 and its accompanying support documents for a description of the control measures. Also, as previously stated, the area has not exceeded the NAAQS since 1991, indicating that the implemented control measures are sufficient to attain the NAAQS.

To further address the adequacy of the attainment demonstration and the point source issue, EPA reviewed the effectiveness of the control measures. Because the control strategies are achieving greater emission reductions than anticipated and accounted for in the SIP, EPA's analysis indicates that even if the Island City facility had a significant impact on the nonattainment area or influenced the background concentration, the area will still attain

³ Short term intensive ambient monitoring studies in which portable PM-10 samplers are distributed throughout a small geographical study area to better characterize PM-10 concentrations.

the 24-hour NAAQS. Information supporting this analysis is contained in the docket supporting this notice.

C. Open Burning, Field and Forestry Slash Burning

Finally, the commenter expressed concern "about when open burning is allowed and that field and forestry slash burning be allowed to increase without good monitoring." Again the comment was only a general concern and did not provide any specific information to support it.

As discussed in the July 1, 1994, **Federal Register**, 59 FR 33914 and further explained in its technical support document, open, field and forestry slash burning activities either do not occur, are adequately controlled or are not allowed during the time period when exceedances of the 24-hour NAAQS typically occur.

IV. Significance of Today's Action

EPA is approving this plan revision submitted to EPA for the La Grande nonattainment area. Among other things, ODEQ has demonstrated that the La Grande moderate PM-10 nonattainment area will attain the PM-10 NAAQS by December 31, 1994. Note that this action includes approval of the contingency measures for the La Grande nonattainment area which take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make reasonable further progress (RFP) or attain the PM-10 NAAQS by the applicable statutory deadline.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute

federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: January 17, 1995.

Chuck Clarke,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (107) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(107) On November 15, 1991, the ODEQ submitted a PM-10 nonattainment area SIP for La Grande, Oregon.

(i) Incorporation by reference.

(A) November 15, 1991 letter from ODEQ to EPA Region 10 submitting the PM-10 nonattainment area SIP for La Grande, Oregon.

(B) PM-10 Control Strategy for Particulate Matter, October 1991, La Grande, Oregon Nonattainment Area, as adopted by the Environmental Quality Commission on November 8, 1991.

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40 CFR Part 52

[CA 14-15-6851; FRL-5145-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 20, 1994 and October 21, 1994. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from solvent metal cleaning operations, gasoline transfer operations, storage of organic liquids, and steam drive wells. Thus, EPA is finalizing the approval of